



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2005

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.44 of 2002
(Appeal No.21/2002)
& TCMP.No.8 of 2003

Syndicate Bank Employees' Co-operative
Thrift & Credit Society Ltd.
rep. by its President,
69, Armenian Street,
Chennai-600 001.

..Appellant

Vs

The Income Tax Officer,
City Circle-I(7),
121, Nungambakkam High Road,
Chennai-600 034.

..Respondent

PETITIONS under Sections 260A of the Income Tax Act against the order dated 7.2.2002 of the Income Tax Appellate Tribunal, 'C' Bench, Chennai in Interest Tax Appeal No.18/Mds/2000 for the assessment year 1992-93 against the order dated 17.11.1999 in Int . T.A.No.23/99-00 on the file of the Commissioner of Income Tax (Appeal)-IX, Chennai against the order dated 26.3.99 in G.I.No.8611-S on the file of the Income Tax Officer (Asst.7) Ward I, Chennai 34 of the Assessment Year 1992-1993.

For Appellant : Ms.Anita Sumanth

For Respondent : Mrs.Pushya Sitharaman

JUDGMENT

P.P.S.JANARTHANA RAJA, J

The following substantial questions of law are raised by the Appellant Assessee under the Act:

"1. Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that the Interest Tax Act would be applicable to the petitioner herein?

2. Whether on the facts and in the circumstances of



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the case, the Tribunal is right in law in holding that the activities of borrowing money and lending money to the members of the petitioner is similar to the one that is carried on by bankers, which accepts deposits from the depositors and lends money to various borrowers?

3. Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the judgment of the Madras High Court reported in Vol.233 ITR 104, is applicable to the facts of the case?

4. Whether on the facts and in the circumstances of the case, the Tribunal is right in not considering the application of Sec.3, Sec.22 and Sec.56 of the Banking Regulation Act, 1949 to the facts of the case with reference to the petitioner Co-operative Society?

5. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that "there is a law of parallel between the Banking business and the activities of the assessee"?

6. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in not considering the observation of the Division Bench of Madras High Court which specifically held that no authority is to be influenced by the order passed by the Single Judge of the Madras High Court and should pass an order independently after application of mind?

7. Whether on the facts and in the circumstances of the case, the Tribunal is right in confirming the demand without considering whether the appellant carries on the business of banking after satisfying the various norms laid down in the Banking Regulation Act?"

2. The facts need to the above questions of law are as under:-

The Appellant is a Co-operative Thrift & Credit Society registered under the provisions of the Multi State Co-operative Societies Act. The relevant assessment year is 1992-93 and the corresponding accounting year ended on 31.3.92. It did not file a return of chargeable interest under the Interest Act of 1974. The assessing officer issued a notice under Section 10 of the said Act which was served on the appellant assessee on 01.03.1997. The appellant filed a writ petition before this Court challenging the said notice and the same was dismissed on 20.11.1997. The High Court directed the appellant to prefer objection to the respondent's notice. Accordingly, the appellant filed his objection before the respondent herein raising several grounds that the Interest Tax could not apply to it, as it being the Co-operative Society, and not carrying on the business of banking. Later, the appellant assessee filed a Writ Appeal No.581 of 1998 wherein a Division Bench of this



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Court was pleased to observe that the respondent herein would decide the issues before him without reference to and without being influenced by the observation of this Hon'ble Single Judge dated 28.11.1997 of this Court, reported in 233 ITR 104. Later, the Assessing Officer issued a notice to the petitioner calling upon to file his return of chargeable interest and Nil return was filed, since the appellant was not come in the purview of the Interest Tax Act. The Assessing Officer held that the interest accrued to the appellant assessee for the period from 01.10.1991 to 31.03.1992 should be brought to tax under the provisions of interest tax by holding that the appellant society is a credit institution within the meaning of Section 2(5)A of the Interest Act and holding that the appellant society is engaged in banking within the purview of the said section. The Assessing Officer also computed chargeable interest at Rs.8,00,000/- as against Rs.6,96,159/- found by the appellant for the period from October 1991 to March 1992.

3. Aggrieved by the order, the appellant filed an appeal to the Commissioner of Income Tax Appeal and raised the issue of jurisdiction as well as assessment of interest tax. The first Appellate Authority dismissed the appeal but reduced the chargeable interest from Rs.8,00,000/- to Rs.6,96,159/-, on verification by the Assessing Officer of the same. Against the aforesaid order of the Commissioner of Income Tax Appeal, the first Appellate Authority, the appellant filed an appeal before the Income Tax Appellate Tribunal, contending that:

(i) the petitioner was not an assessee under the Income Tax Act and was not liable for levy of interest under the Interest Tax Act being a co-operative society not engaged in the business of banking;

(ii) that the first Appellate Authority's conclusion that the processing for the assessment was not barred by limitation, was not tenable on facts and in law;

(iii) that the first Appellate Authority erred in assuming that there was an escapement of assessment in the petitioner's case and

(iv) that notwithstanding his statement that the assessment should have been u/s 10 and not u/s 8, his conclusion that it was an inadvertant error which does not vitiate the assessment, is untenable;

(v) that the conclusions of both the Assessing Authority as well as the first Appellate Authority are based totally on the observations of the learned Single Judge in the Writ Petition, eventhough there was a specific direction of the Division Bench of Madras High Court that the matter should be independently considered, without either of the officers being influenced by the observations in the writ petition by the Hon'ble single Judge.

(vi) that the first Appellate Authority has lost sight of the



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fact that only co-operative societies engaged in banking business, would come under the purview of the Interest Tax Act. Since the petitioner in the instant case does not carry on the business of banking either under the provisions of Interest Tax Act or under the Banking Regulation Act, it would not be liable.

(vii) that the crucial and material issue as to whether the appellant carries on the business of banking after satisfying the various norms laid down by the Banking Regulation Act, has not been considered.

4. Hearing the above arguments advanced by the learned counsel for the appellant, the Income Tax Appellate Tribunal held that the Interest Tax shall be attracted to the appellant assessee and affirmed the order of the authorities below.

5. The counsel appearing for the appellant Society submitted that the business of advancing money by way of loan to the members is not equivalent to the business of banking. The business of banking commercially and legally is not synonymous with the money lending or accepting of deposits. The banking is legally and commercially, a specific class of business, which the Appellant Society does not carry on. The crucial and material issue as to whether the Appellant Society carried on the business of banking has not been considered and the Tribunal had unjustly assumed that the business of taking deposit and advancing loan is a business of banking. Further, it was stated that the Tribunal has not considered the application under Section 3, Section 22 and Section 56 of the Banking Regulation Act, 1949 to the facts of the case with reference to the Appellant Co-operative Society. Further, it was stated that from 01.04.1993, reference to Co-operative Society was excluded and even upto 01.04.1993 only a Co-operative Society engaged in the business of banking, is included within the definition of credit institution. Such aspect had been ignored by the authorities.

6. Section 2(5)A(i) of the Interest Act which existed upto 01.04.1993 reads as under:

"Credit Institution" means-

(i) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in Section 51 of that Act (or a cooperative society engaged in carrying on the business of banking not being a cooperative society providing credit facilities to farmers or village artisans)).

This sub-section (5-A) was inserted by the Finance (No.2) Act, 1991 with effect from 1.10.91 and by the Finance Act 1992, the words in a square brackets in the above subsection, namely "or a co-operative society engaged in



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carrying on the business of banking nor being a co-operative society providing credit facilities to farmers or village artisans" were omitted with effect from 1.4.1993. Accordingly these words were part of sub-section (5A) of Section 2 of the Act from 1.10.91 to 31.3.92".

7. Thus, going by the relevant provisions it may be seen that the charging section in respect of credit institution other than scheduled banks, interest tax is charged on every credit institution for every assessment year. The term "Co-operative Society" in carrying on the business of banking refers to a Co-operative Society need not necessarily a banking company or a company to which the provision of Banking Regulation Act, 1949 are made applicable. A Co-operative Society which lending money to its members or accepting deposits or raising loans from financial or banking institution and advancing the same to its members, amounts to doing the business of banking. The fact that it is only a thrift society or its activities are limited to its members only, could not any way affect the issue, whether the appellant Society is a credit institution for the purpose of levy of interest tax. The Bye-law of the appellant society has been placed before us. The clause 2(b) of the object clause reads as follows:

"The objects of the society shall be:

- a) generally to encourage thrift, self-help and cooperation among the members.
- b) to borrow funds from members or others to be utilised for granting loans to members for useful purposes."

8. From a reading of the above bye-laws, it is clear that the assessee carrying on the business of banking and because its activities are limited only to its members, could not in any way affect the issue whether the appellant assessee is Credit Institution for the purpose of levy of interest. Since the appellant assessee is engaged in the business of banking, providing credit to its members, it is a credit institution for the purpose of levy of interest under Interest Tax Act, 1974. The other argument of the counsel for the appellant was that the assessee not being a banking company and the provisions of Banking Regulation Act not being made applicable, cannot be taken as a credit institution. We feel that the term "a Co-operative Society engaged in carrying on the business of banking" refers to a particular kind of Co-operative society and it need not necessarily be a banking company or a company to which the provisions of Banking Regulation Act are made applicable.

9. In view of the above, we are of the opinion that the interest tax is attracted to the appellant society and the revenue rightly initiated interest tax proceeding and accordingly levied Interest Tax Act. In view of the matter, we answered the above questions of law in favour of the revenue and hence dismiss the above tax case (appeal) filed by the appellant assessee.



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Consequently, the connected TCMP is also dismissed. No order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE INCOME TAX OFFICER,
CITY CIRCLE -I (7)
121 NUNGAMBAKKAM HIGH ROAD,
CHENNAI -34.

2. THE ASSISTANT REGISTRAR
INCOME TAX APPELLATE TRIBUNAL
RAJAJI BHAVAN, BESANT NAGAR,
CHENNAI -90

3. THE SECRETARY
CENTRAL BOARD OF DIRECT TAXES
NEW DELHI

4. THE COMMISSIONER OF INCOME TAX (APPEALS) -IX,
CHENNAI -34.

+1cc to Mr.Anita Sumanth, Advocate Sr 50802
+1cc to M/s.Pushya Sitharaman SSC & IT SR 50553

VC (CO)
km/4.1.

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